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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/753,381	01/02/2001	Eddy Van Beek	4532670/44892	1681

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Kent A. Herink, Esq.
Davis, Brown, Koehn, Shors & Roberts, P.C.
The Financial Center
666 Walnut Street, Suite 2500
Des Moines, IA 50309-3993

EXAMINER

MARX, IRENE

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 07/24/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/753,381

Applicant(s)
Beek et al.

Examiner
Irene Marx

Art Unit
1651



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 9, 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above, claim(s) 8 and 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3 6) ☐ Other: _____

The election without traverse filed 5/9/02 is acknowledged. Claims 1-7 are being considered on the merits.

The Rodas and Bepaling references in the information disclosure statement (IDS) do not comply with 37 CFR 1.98 which requires that

Each publication listed in an information disclosure statement must be identified by publisher, author (if any), title, relevant pages of the publication, date, and place of publication.

Therefore, these two references have not been considered. Applicant is advised that the date of submission of any item of information or any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the IDS, including all "statement" requirements of 37 CFR 1.97(e). See MPEP § 609 C(1).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 5-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims encompass an improper Markush grouping because the phrase "selected from the group including" does not conform with the standard form to be used, e.g. selected from the group **consisting** of A,B, and C.

Claims 6 and 7 are vague and indefinite in reciting "is included at a rate which comprises...". Is the rate per second, per minute, per hour, per day, per week, per month etc.? No new matter may be added.

Claim 5 is confusing in that the amount of enzyme cannot be determined from the recitation "an amount to provide xylanase activity of between 5,000 and 50,000 units/kilogram of

said feed", since the activity, and the amount to be added, would depend on the nature and purity of the enzyme provided.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Claim Rejections - 35 USC § 102

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Beudeker *et al.*.

The claims are directed to a process of adding lecithin or lysolecithin to a feed composition containing an enzyme.

Beudeker *et al.* disclose a process of adding lecithin or lysolecithin to a feed composition containing an enzyme. See, e.g., page 6, paragraphs 3-5.

Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Shibahara *et al.*.

The claims are directed to a process of adding lecithin or lysolecithin to a feed composition containing an enzyme.

Shibahara *et al.* disclose a process of adding lecithin or lysolecithin to a feed composition containing an enzyme. See, e.g., Example 4.

Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Mantykoski-Paukku *et al.*.

The claims are directed to a process of adding lecithin or lysolecithin to a feed composition containing an enzyme.

Mantynoski-Paukku *et al.* disclose a process of adding lecithin or lysolecithin to a feed composition containing an enzyme. See, e.g., Table 1, feed No. 1 and 2.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Lenz *et al.*

The claims are directed to a process of adding lecithin or lysolecithin to a feed composition containing an enzyme.

The reference discloses the addition of lecithin to a food composition for human animals, which comprises the cereal grain wheat and diastase, which is an amylase. In addition the yeast comprises further enzymes (See, e.g., Examples 4 and 5).

Claims 1-2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Shiina *et al.*

The claims are directed to a process of adding lecithin or lysolecithin to a feed composition containing an enzyme.

The reference discloses the addition of lecithin to a food composition for human animals, which comprises the cereal grain wheat and the enzyme lipase. See, e.g., Abstract.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Zimmerman *et al.*

The claims are directed to a process of adding lecithin or lysolecithin to a feed composition containing an enzyme.

The reference discloses the addition of lecithin to a food composition for human animals, which comprises the cereal grain wheat and the enzyme xylanase. See, e.g., Example 1, lines 51 et seq.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmerman *et al.* taken with Bedford *et al.*

As noted in the rejection under 35 U.S.C. § 102, *supra*, the reference discloses the addition of lecithin to a food composition for human animals, which comprises the cereal grain wheat and the enzyme xylanase. See, e.g., Example 1, lines 51 et seq.

The reference may differ from the invention as claimed in that the feed is not specifically designated for farm animals, such as poultry, pigs or cattle, in the amount of enzyme contained in the composition and in the "rate" of surfactant addition.

However, Bedford *et al.* disclose enzyme feed additives and animal feeds based on small cereal grain containing xylanase and other enzymes having the required amounts of enzymes. (See, e.g., col. 10). In addition, the activity disclosed for PEN #3, in Zimmerman *et al.* appears to meet the claim limitations regarding activity as written (See, e.g., bridging paragraph between col. 9 and 10). With respect to the rate of surfactant, as exemplified by lecithin, the preferred amount is between about 10% and 25% by weight of about 0.5% to about 1.5% by weight of the feed (See, e.g., col. 6, lines 43-62) which appears to meet the "rate" as claim designated.

The optimization of conditions identified as result-effective variables cited in the references would have been prima facie obvious to a person having ordinary skill in the art

Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to modify the process of Zimmerman *et al.* by preparing animal feeds according to the teachings of Bedford *et al.* and adjusting the amount of xylanase and/or of lecithin or lysolecithin added to the feed composition for optimization purposes in order to obtain a nutritious and palatable food or feed suitable for humans and/or farm animals.

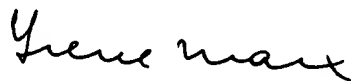
Thus, the claimed invention as a whole was clearly prima facie obvious, especially in the absence of evidence to the contrary.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (703) 308-2922. The examiner can normally be reached on Monday through Friday from 6:30 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The appropriate fax phone number for the organization where this application or proceeding is assigned is before final (703) 872-9306 and after final, (703) 872-9307.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service whose telephone number is (703) 308-0198 or the receptionist whose telephone number is (703) 308-1235.


Irene Marx
Primary Examiner
Art Unit 1651